

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
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)	
)	

COMMENTS OF:

Chippewa Cree Tribe

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June 15, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C., 20554
Via: ECFS

Dear Ms. Dortch,

RE: WT Docket No. 17-79 Seeking comments on notice of proposed rulemaking and notice of inquiry accelerating wireless broadband deployment by removing barriers to infrastructure investment.

Thank you for the opportunity to submit comments on the Notice of Proposed Rulemaking and Notice of Inquiry released by the Wireless Telecommunications Bureau of the Federal Communications Commission ("Commission")(FCC) on the accelerating wireless broadband deployment by removing barriers to infrastructure investment.

The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation ("CCT") has reviewed and considered the proposed rulemaking, the removal of barriers to infrastructure investment, and offers these comments to assist and improve the Tower Construction Notification System (TCNS) process to protect cultural and historic properties, and recommendations to questions posed by the Commission.

BACKGROUND

The Chippewa Cree Tribe has a documented history of traditional use and occupation across lands that today fall within multiple states. Colonial expansion and population

growth in the eastern woodlands resulted in migration of the Ojibwa peoples westward, in search of a secure location in which to raise their families and provide for their people. Oral history states that a prophecy followed by the grandfather of the modern reservation's namesake, Rocky Boy, directed the leaders of the ancestral band of Ojibwa to travel to the "backbone of the earth" to seek survival. This term is recognized as a traditional name for the Rocky Mountain range, synonyms of which are used not only by the Cree, Blackfeet, and other Algonquian-speaking tribes. Travel to this area from ancestral homelands in present-day Pennsylvania occurred over several generations, and resulted in settlement with Cree bands that also resided traditionally in the area. The combined Chippewa Cree Tribe of the Rocky Boy's Indian Reservation is now one of seven Indian reservations in the present-day State of Montana.

To address the historic preservation needs of the Tribe, the Chippewa Cree Tribal Business Committee as the governing body established the Chippewa Cree Cultural Resources Preservation Department (CCCRPD) by resolution. CCCRPD includes the Tribal Historic Preservation Officer (THPO) in addition to an Archaeology Department and Section 106 Compliance review staff. CCCRPD has established a strong reputation within the national THPO community and amongst federal agencies as an effective and innovative program. Not only does the CCCRPD meet the high-level of demand placed on the THPO and tribal cultural resource programs to engage in federal consultation, but has exceeded expectations and risen to the standard of many industry partners by developing and utilizing an online consultation management database.

The Chippewa Cree Tribe works with a variety of federal agencies on small and large

projects in the compliance of federal laws and regulations, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA) and the National Environmental Preservation Act (NEPA). The Tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers. The Chippewa Cree Tribe works through the iResponse database processing service website. Since April 2014, the CCCRPD has responded to over 8,550 projects through this database service. Of these, 8,169 projects originated through the TCNS system. The use of iResponse database has allowed the CCCRPD to respond to consultation requests in a timely manner, facilitating the expedient deployment of new telecommunications system. With the database and TCNS process, the CCCRPD can provide transparency and accountability for tribal monitoring work by creating deliverables for the telecommunication industry.

COMMENTS

As a Tribe that resides in rural Montana, we know the struggles with the lack of broadband deployment and the limitations that it puts on our people. Through the change and growth of the wireless broadband and small cell deployment, the Chippewa Cree Tribe is prepared to collaborate and adapt to meet the needs of infrastructure development and simultaneously fulfill its obligations under Section 106. We welcome the opportunity to work with FCC, Industry, and other Indian Tribes improve and grow on the previous work of the TCNS Program.

The Model for Consultation- The Federal Communications Commission's TCNS has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Over the past 13 years, the Tribe has worked with and developed quality relationships with the many consultants installing telecommunication infrastructure facilities including micro cell tower siting through the TCNS Program. The Chippewa Cree Tribe provides prompt response to cell tower notifications. When any situation arises using the TCNS Program, Tribes have been able to promptly contact industry consultants and/or FCC staff to expedite resolutions. With the emerging 5G technology by the wireless telecommunications industry, the Chippewa Cree Tribe can see the benefits of modernizing the existing TCNS system to meet the needs of all parties. The Chippewa Cree Tribe has encountered many of the same issues in working with the telecommunication industry such as the lack of a timely response, failure to provide adequate information, disregard for Tribes as governmental entities, disregard for the Section 106 process, and the failure to pay for services rendered.

The Chippewa Cree Tribe has been using the TCNS Program for several years and the experience has been favorable in that we are able to have direct access to information regarding proposed projects and are able to be a part of the planning process. The Tribe offers these examples of the successes, failures, and recommendations how the TCNS Program works and can be improved upon.

System has Worked and Will Work

1. The Chippewa Cree Tribe is concerned by the industry's comments asserting there is low or non-existent "adverse effect findings"; the Tribe strongly disagrees with this assertion as the environment is constantly changing, causing some sites to become covered by topsoil. These cultural sites would then become endangered as construction workers are not trained to adequately identify these features, which would cause an adverse effect.
2. The TCNS system allowed the Chippewa Cree THPO to have an impact on various projects that would potentially threaten historical and culturally significant areas for the Chippewa Cree Tribe. One example occurred in Eastern Montana, where the proposed project involved the construction of a communication tower. The effectiveness of the system has allowed the relocation of proposed project sites to avoid cell tower placement on areas where the THPO had identified as a cultural concern.
3. There have been numerous examples by THPOs that demonstrate the TCNS program is doing exactly what it was designed to do which is to lessen the likelihood of an "adverse effect" by working closely with the Industry's consultants or tower construction companies to amend their project plans. It is uncertain if these changes are tracked by the TCNS system. We recommend FCC consider a new mechanism to document such changes, because the misconception from the industry could a communication issues with their consultants not documenting the field activities with Tribes, and consideration if there should reporting requirement for the Section 106 reviews. To our knowledge, there isn't a way the system can validate and

confirm actions were taken to avoid an adverse effect for the undertaking.

Working and Evolving with Industry

The CCT has been diligently working with the FCC and Industry by utilizing a consultation database (iResponse) to help expedite the review process of the TCNS projects. This database allows industry, or those contracted by them, to upload the project location information, cultural survey report, and all other relevant documentation necessary to help tribes review projects in a timely manner. A timestamp is placed with each submission, document upload, and comment made by both Industry and the CCT. These timestamps help streamline projects so no project remains on the database for longer than the 30-day review period. On occasion, a project will remain on a database due to lack of documentation from the consultant/Industry needed for the review process.

Each project that the CCT receives on the database is viewed by trained personnel and is issued a letter stating that there is either 'No adverse effect', 'No cultural properties', or 'Tribal Monitor Request', depending on the location. On occasion, the CCT have worked with Industry/consultant in moving a project away from a cultural property so that there is no adverse effect, or no Tribal Monitor is needed.

Recommendations

- a. The FCC should consider and review the TCNS system and add a tracking feature to enhance the process so when such changes are done by the applicant it is reflective as "amended" in the completion of the application for the Section 106 review process for the FCC approval. Often, the cultural

consultant will find a 'no adverse effect' or 'no properties' in their initial review, but there is knowledge that each Tribe has that is not known of or about. Unfortunately, Tribal environmental knowledge (TEK) is overlooked, which causes many of these TEK sites to be destroyed. The Traditional Ecological Knowledge ("TEK") is unique and not taught within western educational systems and must be considered within Section 106 review process. In reviewing archeological reports, it is apparent that Tribal TEK is not a factor and needs to be included in the consideration.

- b. Another proposed change would be to review the FCC Form 620 and 621, which is completed by the applicants. Unfortunately, the information provided on these forms are not complete and needs to be updated. As tribal entities, we rely on the information provided in these forms, but when the information is not adequate, we request additional information or clarification of these projects, which can cause delays for tribal determination. The Chippewa Cree Tribe use of the iResponse database to assist with the Section 106 review process. This database can track delays by placing a timestamp on each project from when it is submitted on the database, when the documents were uploaded, and keep track of the comments, be it from the THPO or the consultant. It has been found that the delays have been attributed to lack of information received from industry on projects, rather than the THPO not responding.
- c. The Chippewa Cree Tribe recommends the FCC review the TCNS process to

track instances where Tribes have asked the project applicant for additional data to complete a timely review which can cause delays.

- d. The system in place for the Positive Train Control (PTC) system is an excellent example on how to answer the small cells. This system requires the railroads to utilize the FCC TCNS database to learn what Tribal Nations need to be contacted for consultation. This program also provides direction on how and when monitoring may be appropriate/required, and establishes a more definitive timeframe for Section 106 review.¹

FEES

There is no doubt that Tribes should be compensated for providing consultant services as it relates to their own Tribal knowledge. Tribes possess special expertise in assessing the eligibility of historic and pre-contact properties that may possess religious and cultural significance to them. This is not to be taken lightly as this knowledge is both precious and unique to each Tribe and is why consultation is so important. State Historic Preservation Offices (SHPOs) know that even though Tribes share cultural survey reports, the reports do not contain all the information due to its confidentiality. The relations concerning consultation between the FCC and Tribal governments are separate from the consultation occurring between industry and Tribal Nations in that the FCC has a federal trust responsibility and Industry does not. Thus, Industry must seek the expertise of Tribal Nations as it pertains to the possible effects of projects to cultural properties. Additionally, it is not possible to have the personnel review projects for no compensation for their own

¹ Positive Train Control Infrastructure: Section 106 Review Process under the Advisory Council on Historic Preservation's May 2014 Program Comment. Jill Springer, Deputy Federal Preservation Officer. <https://us-fcc.app.box.com/s/9ygwc3kdr0aqtdtnkflwustrisaqbrf5>.

time, therefore, it is necessary to charge a fee for Tribal Nations to adequately employ qualified personnel to review projects. Consultants working for the wireless telecommunication industry are now contacting Tribal representatives inquiring about fees related to small cells, pole and equipment replacements, and to negotiate a fee change due to the new infrastructure, which the deployment is a significant departure from the existing micro tower construction Section 106 process. We recommend further dialogue between FCC, industry and Tribal Nations to discuss the criteria, types of equipment, operational maintenance, weather impacts due to storms, hurricanes, tornados which may cause future ground disturbances, especially if new collocations are placed on older and aging infrastructure.

The outstanding Twilight Towers issue complicates the situation, as some Tribes suggest the non compliant towers should be addressed beforehand, however the NPRM specifically raises exemptions for proposed amendments to the National Programmatic Agreement. FCC guidance would be critical to resolving the Tribal Nations' concerns, or seek additional comment on an alternative process working in parallel with the 5G deployment.

Comments that suggests Tribes did not participate in the clearing process of the towers is an unlikely reason, considering the National Association of Tribal Historic Preservation Officers (NATHPO) 2016 Annual Conference's agenda had twilight towers as a topic to discuss with the FCC but unfortunately was not addressed because the FCC's representatives raised the industry's concerns for the 5G deployment, which was the first time Tribal representatives heard about them.

BATCHING

1. The use of batching is becoming prevalent in the TCNS process for 5G deployment. Tribes need to be consulted on the batching method. We suggest FCC examine the current TPC process to determine what changes are necessary specifically for small-cell deployment or DAS nodes infrastructure. FCC guidance addressing considerations for number of facilities in a “batch”, the criteria, changes to the TCNS system, and other factors like geographic location, project specific, and procedural changes to the existing process. It warrants further discussion if an amendment(s) will be considered to the National Programmatic Agreement (“NPA”). The Chippewa Cree Tribe THPO is not opposed to the discussion on the use of batching in regards to small cell deployment and DAS nodes, but would request consultation and examination on the definition and criteria of what is a batch and a small cell deployment. There must be guidelines pertaining to the distance between each small cell and how uniform they will be. For example, an application of small cell deployment must be all uniform, all within a certain distance from a centralized point, and all be non-ground disturbing. As of today, industry is using the batching process which is further complicates how Tribes review and assess their fees which can vary from tribe to tribe.

2. RESPONSE TIME

Batching of small cells for 5G deployment must be a review period greater than the 30-day period. The larger the area of a project, the longer the review period must be to give tribes an adequate amount of time to fully review the possible effects of the project.

When it pertains to the TCNS projects, the iResponse online platform enables a “shot clock” for each application review for the Chippewa Cree THPO, unless there are projects where the consultants have provided incomplete information. Once all information is received on the database, the review takes on average less than a week. Everything pertaining to the project is recorded on the iResponse database, including timestamps, comments, review stage of project, and who to contact for further information.

EXCLUSIONS

The CCT are most concerned with ground disturbing activities as it relates to the building of facilities, replacement of poles, and the addition of equipment. Any projects that require ground disturbance would then require consultation with Tribes as there are those structures that were built prior to consultation (Twilight Towers). These towers built without consultation could have had an adverse effect to cultural properties and traditional viewsheds, and are thus subject to further review and possibly mitigation efforts.

Pole replacements could also have an adverse effect, especially if the new pole’s circumference increases. A larger pole would go against the original agreement and could potentially impact the viewshed of a Traditional Cultural Property (TCP), or cause further ground disturbance as larger poles need to be placed deeper in the ground.

As for collocations, these are extremely disturbing as sometimes the original tower was moved so a site is not impacted, but the addition of another pole could cause an adverse effect due to its larger footprint.

CONCLUSION

The Chippewa Cree Tribe is in support of the growth of the wireless infrastructure and welcomes the opportunities that this will bring to the Tribe and our people. The CCT strive to be a part of the continued evolving of telecommunications and will collaborate with these providers on streamlining its 5G deployment while also adhering to the consultation process. Thank you for your consideration of these comments.

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(Provided verbal approval)
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CC: Bambi Kraus, President, National Association of Tribal Historic Preservation Officers